IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NOS. 63 of 2000 AND 27 OF 2002.

Employees State Insurance
Corporation, represented
by the Manager, Margao. ... Appellant.

Versus

1. M/s. Famous Steel Doors
   Mfg. Co., Opp. Chuna Factory,
   Zariwaddo, Shop No. 2,
   Davorlim, P.O. Navelim, Margao.
2. Mr. Mohammed Ali Hussain,
   Margao. ... Respondents.

Mrs. A.A. Agni and Mrs. A. Dessai, Advocates for the Appellant.

Mr. P.K. Gude, Advocate for the Respondents.

Coram: P.V. HARDAS, J.

Date: 14th February 2003

ORAL JUDGMENT.

The complainant, being aggrieved by the Judgment of the learned Judicial Magistrate, First Class, Margao, in Labour Case Nos. 269/L/94/I and 270/L/94/I, dated 29th January 2000, acquitting the respondent/accused for offences punishable under Sections 85(1-A), 85(1-B) and 85(2) of the Employees' State Insurance Act, has assailed the aforesaid Judgment in the present appeal. Labour Case No. 269/L/94/I related to the failure on the part of the accused to pay the contribution for the period from April 1993 to October 1993 and Labour Case No. 270/L/94/I related to the failure of the accused to submit the returns in the prescribed form for the period ended 31st March 1993 and

30th September 1993.

2. The learned trial Court explained the substance of accusation against the accused at Exhibit 6. The accused pleaded not guilty and claimed to be tried.

3. The prosecution in support of its case examined one Prakash Majumdar, who at the time of his evidence was working as a Manager with the complainant Corporation.

4. P.W.1 Prakash in his evidence stated that he had joined as a Manager on 25th August 1998 and the complaint had been filed by his predecessor one D.V. Naik, whose signature he identified. His deposition was on the basis of the record. During the evidence P.W.1 Prakash produced, at Exhibit 14, a Sanction Order, dated 8th December 1993, issued by the Regional Director of the Corporation. At Exhibit 15, P.W.1 Prakash produced the Inspection Report, dated 14th February 1992. The said Inspection Report, at Exhibit 15, is a xerox copy, which is attested by the Regional Director. Undisputedly, even according to P.W.1 Prakash, the Inspection Report and visit note had been prepared by one P.V. Santhakumar, who, unfortunately, has not been examined in this case. The pivot of the prosecution is

that a code number had been allotted on the basis of the Inspection Report, at Exhibit 15.

5. The learned trial Court framed a question under Section 313 of the Code of Criminal Procedure, which, interestingly, reads as under:-

> "Q. It is in evidence of Shri Prakash Majumdar P.W.1 that you have failed to pay contribution towards E.S.I. in respect of factory of accused no. 1 for the period from April 1993 to October 1993 although accused no. 1 is covered by E.S.I. Act. What have you to say?"

The learned trial Court had not questioned the accused regarding the allotment of the code number, the visit or the sanction, which had been given at Exhibit 14.

6. The learned trial Court acquitted the accused principally on the ground that the complainant had not been able to establish that the factory of the accused was covered by the Employees' State Insurance Act.

7. I have heard Mrs. Agni, the learned counsel appearing on behalf of the appellant, who has brought to my notice a Judgment of a learned Single Judge of this Court, in Criminal Appeal No. 28 of 1999, who has held that allotment of a code number would obviate the necessity of proving that the respondent/accused is covered by the Employees' State Insurance Act.

8. Adverting to the evidence on record it has to be seen that there is absolutely no evidence regarding the allotment of the code number to the factory of the respondent/accused apart from the bald assertion made by P.W.1 Prakash. Even the documents at Exhibits 14 and 15 have not been put to the accused under Section 313 of the Code of Criminal Procedure. The fact of allotment of code number has also not been put to the accused in the Statement under Section 313 of the Code of Criminal Procedure. In view of this the mere fact that a code number has been allotted cannot come to the rescue of the complainant and the complainant cannot be absolved from proving that the provisions of the Employees' State Insurance Act are applicable to the factory of the respondent/accused. The learned trial Court, according to me, was justified in acquitting the accused for want of any evidence regarding the applicability of the provisions of the Employees' State Insurance Act to the factory of the accused.

9. These are appeals against acquittal and the view taken by the learned trial Court on the face of the record does not appear to be perverse. Accordingly, both the Criminal Appeals which have been decided by this common Judgment are dismissed with no order as to costs.

(P.V. HARDAS)
JUDGE.